**NEWMARKET PLANNING BOARD MEETING**

**OCTOBER 8, 2019**

**MINUTES**

Present: Eric Botterman (Chairman), Val Shelton (Vice Chairman), Diane Hardy (Town Planner), Jamie Bruton, Sarah Finch, Michal Zahorik (Alternate), Ted Seely (Alternate), Gretchen Kast (Town Council ex officio)

Absent: Bill Doucet, Zachary Dumont (Town Council Alternate ex officio) both excused

Jane Ford

**Agenda Item #1 - Pledge of Allegiance**

**Agenda Item #2 – Public Comments**

None.

**Agenda Item #3 - Review & Approval of Minutes** 08/20/19 & 09/10/19

***08/20/19***

**Action**

**Motion: Val Shelton made a motion to approve the minutes of 08/20/19**

**Second: Jamie Bruton**

**Vote: Eric Botterman abstained due to absence**

**All others in favor**

***09/10/19***

**Action**

**Motion: Val Shelton made a motion to approve the minutes of 09/10/19**

**Second: Sarah Finch**

**Vote: All in favor**

Eric Botterman appointed Ted Seely and Michal Zahorik to fill in for Jane Ford and Bill Doucet.

**Agenda Item #4 - Regular Business**

***Consideration of appointment to Alternate – Thomas Howard for a term to expire 2021.***

Will be on next agenda.

***Kyle Pimental, SRPC – Regarding update to Newmarket’s Water Resource Chapter of the Master Plan.***

Kyle Pimental, Principal Regional Planner at SRPC, stated they would be working with the Town to update the Water Resources Chapter of the Master Plan. He stated, last year, SRPC applied for a grant through NH DES’s Source Water Protection Program. They were asked to develop drinking water maps to review and update potential contamination sites and to implement two local drinking water protection projects. They were selected for funding. He and his Executive Director sat down with the Town Planner and Town Administrator in July to talk about projects being considered by the Town. In that discussion, they talked about the 2009 Master Plan Water Resource chapter and that this funding could be used for an update. They were approved to use all of the available funding for the update. There have been development changes since 2009. Different patterns have emerged and different climate conditions. The intent of this update is to provide guidance for the Town for policies, regulations, and actions for protecting existing drinking water and thinking about long-term protection measures. The larger emphasis the State wants the Town to think about is how to deal with emerging contaminants. The SRPC will work with a subcommittee of the Planning Board and will come back to the full Board with a draft for feedback. They will also do a public outreach component. They have $8,000 in federal funds and 25% of the total project cost will be a cash match from the Town. The Planning Board will form a subcommittee to review new data, fine-tune the recommendations, and assist with public outreach. The grant ends on May 30, 2020. There was some discussion of the public input and the makeup of the subcommittee.

***77 Hersey Lane, LLC/Walter Cheney/Chinburg Builders, Inc. – Continuation of a public hearing for an application for Special Use Permit for an open space single family subdivision, on a twelve acre lot. The lot is located at Hersey Lane, Tax Map R4, Lot 3, R2 Zone.***

Eric Botterman stated the applicant has requested a continuance.

**Action**

**Motion: Val Shelton made a motion to continue the application to November 12, 2019 at 7 pm**

**Second: Sarah Finch**

Diane Hardy stated some technical questions came up and the applicant is looking for some guidance. She would like to have a TRC meeting prior to the next meeting.

**Vote: All in favor**

***Skyfall LLC/Erik Potts – Continuation of a public hearing for an application for Site Plan, regarding a 32’x12’ addition of one garage bay to the right side of the current building. The lot is located at 82 Exeter Road, Tax Map U4, Lot 2-2, B1 Zone.***

Eric Botterman stated the applicant requested a continuance.

**Action**

**Motion: Val Shelton made a motion to continue the application to November 12, 2019 at 7 pm**

**Second: Jamie Bruton**

**Vote: All in favor**

***Masaran Group, LLC – Continuation of a public hearing for an application for Major Site Plan Review, regarding two additions to an existing building (12,610 sq. ft. & 11,000 sq. ft.), with new parking and access drives. The lot is located at 5 Forbes Road, Tax Map R3, Lot 9-3, B2 Zone.***

Eric Botterman stated they have a recommendation from the Planner. He asked for an update from the applicant.

Jonathan Ring, Jones & Beach Engineers, represented the applicant. He stated they had met with the TRC and made some changes to the plans, which changed the parking layout, and moved the hydrant out front. They talked about adding a sprinkler system and that is one of the conditions of approval that they resolve fire protection issues related to the site with the Fire Department. It was mentioned that the State has requested trip generation data, which they will submit to NH DOT Division 6. They made some changes to the landscaping and drainage. Regarding the transformer on the left side of the building, they are working with Eversource to see if the existing one is big enough to satisfy the electrical requirements for the two additions. If not, they will have to swap out the transformer.

***Eric Botterman opened the public hearing.***

No comments.

***Eric Botterman closed the public hearing.***

Mr. Ring stated he had a few waiver requests. Appendix B Site Plan 3.02(A)(1) refers to the number of parking spaces. The current use is about 85% warehouse and 15% offices with many existing spaces not being used. They anticipate the tenants in both additions will be similar with approximately 85% warehouse space. The total anticipated employee count would be 70 overall and they are providing 102 spaces. This was discussed in May with the Board. The Board wanted as little impervious surface on the site as possible. Note 3 on the plan references the parking.

**Action**

**Motion: Val Shelton made a motion to approve the waiver request for Section 3.02(A)(1) regarding the number of spaces based on the information provided by the applicant in a letter dated 09/17/19**

**Second: Jamie Bruton**

**Vote: All in favor**

Mr. Ring stated the waiver is for Section 3.02(C) Parking Location. The regulations require parking spaces to meet the property setbacks, but due to the location of the existing building, there is insufficient room to place the proposed double loaded parking aisle to the left of the building and it encroaches slightly into the side and front setbacks. The landscape buffer is 15’ and they have the 25’ aisle.

**Action**

**Motion: Val Shelton made a motion to grant the waiver request for Section 3.02(C) regarding parking location based on the information provided by the applicant and noted in the plans**

**Second: Sarah Finch**

**Vote: All in favor**

Mr. Ring stated the next waiver was for Section 4.08 Plan Scale. The regulations require 1”=20’ scale. To show the entire property on one sheet and minimize confusion and ease of review, the plans are 1”=30’ scale.

**Action**

**Motion: Val Shelton made a motion to grant the waiver request from Section 4.08 Plan Scale based on the information provided by the applicant on the 09/17/19 memo**

**Second: Jamie Bruton**

**Vote: All in favor**

Mr. Ring stated the next waiver was for Section 3.02(B)(1)(a)(2) Handicap (ADA) Parking Stall Length. They are retrofitting an existing handicap space and restriping it and the lengths are only 18’ long.

**Action**

**Motion: Val Shelton made a motion to grant the waiver request from Section 3.02(B)(1)(a)(2) regarding handicap parking stall length from 20’ wide to 18’ wide**

**Second: Gretchen Kast**

**Vote: All in favor**

Diane Hardy stated she had not seen an elevation drawing as required by Site Plan regulations but then found it in the file tucked behind another plan. They had not yet discussed it, so she passed it around to the Board members. She stated Mr. Ring did an excellent job bringing everyone up to date and she concurs with everything stated. The staff recommendation is that the Board conditionally approve the major site plan application. Several of the recommended conditions are standard conditions:

1. The Applicant shall enter into a Developer’s Agreement, with the Town of Newmarket, which includes findings of fact, special site plan approval conditions, the Town’s expectations prior to and during excavation and construction, requirements prior to the issuance of building permits, certificates of occupancy, scheduling and the timing of site improvements and construction.

1. The Applicant shall make an advance payment to the Town to allow for the Town’s engineering consultant to provide construction observation and coordination services to assure compliance with the Town’s regulations and the approved site plan throughout construction.
2. Impact and water connections fees for the project (calculated in accordance with Town Regulations) shall be paid to the Town of Newmarket prior to the issuance of any certificates of occupancy. Projected flow data for water system, as approved by the Town’s engineering consultant, shall be used as the basis for the water impact fees.

1. Evidence that all relevant and updated Federal and State permits relating to highway access have been secured. Copies of all permits (and any corresponding conditions) shall be provided to the Town prior to plan signing. (NH DOT Highway Access Permit and NHDES Septic System Approval).

E) The following note shall be placed on the Site Plan (C-2). No mechanical equipment on and/or in the building including electrical, plumbing, heating ventilation, and air conditioning equipment shall be exposed to view from the public right-of-way and shall be properly shielded and screened from Route 108 to the maximum extent practical.

F) Special Conditions:

1) The Site Plan (Drawing C-2) shall be signed and dated by the licensed land surveyor, prior to plan signing.

2) The Applicant shall install a code compliant fire suppression system for the existing building and the two proposed additions per requirements of the Newmarket Fire Chief.

3) The Applicant shall comply with the recommendations of Underwood Engineers regarding electrical service and the sizing of the mainline for the fire suppression systems as stated in their letter of September 25, 2019, prior to the issuance of a building permit for the proposed additions.

4) The Applicant shall provide an elevation view of the front of the proposed/altered building as required in Section 4.10 Site Information of The Site Review regulations.

5) The Applicant, and his engineer, shall coordinate this project with the Division 6 of the New Hampshire Department of Transportation. Site information and project traffic count data shall be provided to the NH DOT by the applicant so they determine if the traffic impacts associated with this application warrants the submission of a highway access permit and/or if further modifications to recently updated intersection of Forbes Road and Route 108 will be able to accommodate any increased traffic, with the understanding that any additional modifications, or off-site improvements resulting from the highway access permit will be paid by the applicant and not the Town of Newmarket. Said modifications, if required, shall be designed by the Applicant’s engineer and approved by the NH Department of Transportation prior to the signing of the plans by the Planning Board Chairman and before the Plans can be recorded at the Rockingham County Register of Deeds. The implementation of said approved plans may be subject to a performance guarantee and said improvements shall be completed prior to the issuances of any Certificates of Occupancy for the proposed additions.

G) The applicant’s engineer shall provide data input to the PTAPP Database, prior to plan signing, subject to the review and approval of Underwood Engineers.

H) For purposes of vesting as provided by RSA 674:39, the site plan approval shall be deemed to be exempt from any subsequent changes in subdivision and site plan review regulations, impact fee and zoning ordinances of the Town for a period of five (5) years after the date of approval provided “active and substantial development or building” has occurred within 24 months of the date of this approval. The Planning Board has defined “active and substantial development or building” as being site grading, installation of utilities and septic system, and foundation work. Permanent vesting, beyond five (5) years, shall occur upon “substantial completion of the building and site improvements”, as shown on the approved site plan.”

Mr. Ring stated the only condition they have a question about is item (F)(2) for the fire suppression system. This is a site plan for additions. If this project does not move forward, there is no requirement to sprinkle the building. If it does, they will make sure their fire protection engineer and contractors work with the Fire Chief to secure sign off. Diane Hardy stated the Fire Chief wanted to see the entire building sprinklered to bring it into compliance with Life Safety Codes. The Board decided to modify the condition to state it would be prior to issuance of the building permit.

Justin Gray, Promocentric, asked about the vesting condition. He wondered if all of the items listed in (H) had to be done. Diane Hardy stated yes.

***Eric Botterman closed the public hearing.***

**Action**

**Motion: Val Shelton made a motion that they approve the application for a Major Site Plan for the construction of two additions to an existing building with new parking and access drives located at 5 Forbes Road, Tax Map R3, Lot 9-3, B2 Zone, subject to the Town Planner’s recommended conditions of approval, as amended, in the October 5, 2019 memo to the Planning Board as amended by discussion by the Board tonight**

**Second: Sarah Finch**

**Vote: All in favor**

***CRC Future Corp. - Public hearing for an application for Design Review, for a 28 unit, single family residential development. The lot is located at Hersey Lane, Tax Map R5, Lot 132, R2 Zone.***

Diane Hardy stated this is rather complicated, as this is a plan that has been revised four times over the last twenty-five years. This lot is part of the original Durell Woods subdivision, which was approved in 1987. This project involved 192 units, with 64 single family units, and included condominium units. This was approved under the Alternative Design Subdivision (ADS) regulations that were in effect at that time. At this point, 64 single family homes have been built and 61 condominiums. Under the approval there was several acres of open space land. At present, there are two undeveloped tracts, Lots 131 and 134. This application involves Lot 132. The Durell Woods subdivision was vested by the Planning Board in 1990. The original plan for this lot was for thirteen 4-unit dwellings and one 2-unit dwelling for a total of 54 units. In 2012, Walter Cheney, Jr. came before the Board and asked to modify the original approvals to allow for a reconfiguration of Lot 132 and he proposed 26 duplex units to be completed in three phases. The Board approved the modification to the site plan with conditions. She had provided the Board with copies of that Notice of Decision. The first phase of that development came in for building permits and that involved the construction of five duplexes (with a total of 10 units) and they are all complete. There is an agreement with Chinburg Builders to pursue the remaining development. They are proposing 28 single family lots. That would make for a total of 38 units as opposed to the original 52 units. This is a significant reduction.

Scott Cole, Beals Associates, represented the applicant. He showed a plan of the original Durell Woods. He showed the parcel location. They have looked at the road network, and it will be relatively the same as it was before. They will be using almost exactly the same proposed road system on the northern side of the property. There will be a cul-de-sac, where there was a different turn-around configuration before. The lot is 8.9 acres and the road length is slightly more than what was previously proposed, because of the added cul-de-sac length, roughly a total of 1,240 feet. They interpreted this as a site plan amendment, as this will be a condominium development on private roads.

Eric Botterman stated the roadways are basically the same, so he assumed the grading is very similar, therefore, the drainage will be similar. Mr. Cole stated he would suspect that to be case. It has not been finalized yet.

Diane Hardy stated they will have to get an updated AOT (Alteration of Terrain) permit for the entire new plan. They will have to get the plan for Phase 1 amended.

***Eric Botterman opened the public hearing.***

Steve Jerome, 12 Hillside Lane, stated 28 single family homes sounded fine to him. He has lived there since 2006. They always knew someone would build up there at some point. It’s a nice town and we have a good economy. People want to build. It is good a local, quality builder is going to build. 28 single family homes will be very compatible with what is at the top of the hill. He asked if that was the last of the Durell development. Diane Hardy stated there are two other lots that haven’t been developed. One is currently being used as the site for the Town’s water treatment blending system associated with the MacIntosh Well. There is an easement on that lot. The other lot is across from that one.

Mr. Cole stated, since this project has been going on for a long time, they want to make sure they are on the right track and provide what the Board will require. They want to ensure what the next full step would be. Diane Hardy recommended handling this just like the modification in 2012, where they had a public hearing, notified abutters, and there were conditions placed on the modified plan. Eric Botterman stated, if they follow the previous conditions, they will be on the same page.

***Eric DeWitt – Request for a Waiver of Impact Fees for the residential units in the mixed use building at 81 Exeter Road, Tax Map U3, Lot 137, B1 Zone. The proposal was to remove the existing buildings and driveways and build a 2,920 square foot, two-story, mixed use (commercial/residential) building, with municipal water and sewer. The site plan included associated parking, drainage, and landscaping improvements.***

Eric DeWitt stated he was requesting an adjustment to the assessed impact fees. He would like to adjust them according to the BCM Planning LLC letter, dated June 7, 2019, which talks about the difference between a studio apartment vs other types of residential units. Diane Hardy stated the Board had copies of that. The previous hearing for impact fees resulted in fees being waived for three units, but there was also discussion if he had more information from a real estate marketing agent he may be able to get more of the fees waived.

**(There is a gap in the recording here).** Eric DeWitt presented his request for a waiver of school impact and recreation fees.

Mr. DeWitt stated regarding water and wastewater fees, it says studios have less impact, because there are fewer people living there and the consultant has recommended a new impact fee of $593 for wastewater and $356 for water supply.

The applicant did not have a copy of the aforementioned memo. Diane Hardy left the room to retrieve the memo and make copies.

Mr. DeWitt gave an overview of the project update. He is still working to satisfy the conditions of approval. He attempted to get the permit to excavate the sewer line and had his excavator meet with the Water and Sewer Department. Unfortunately, the sewer connection won’t work. There is also a water main in the way. His engineer proposed a solution, but it did not satisfy the Town’s engineer. They are working on a solution.

The Board took a five minute recess.

The Board did Committee Reports here. See Agenda Item #5 for details.

Val Shelton stated the Board cannot waive anything unless it is stated in the ordinance. They can waive impact fees. She read the section. The applicant is using the report the Consultant did for the Town Administrator did as testimony. She stated Diane Hardy should not be in her office looking for the report, the applicant should have it here as the premise for why the Board should be waiving fees. It is incumbent upon the applicant to provide the Board with the packet of information. They should have the applicant provide this, with his reasons.

Diane Hardy was not able to pull up the document. Eric Botterman stated the applicant should read the ordinance to understand it better. Val Shelton stated the Planning Board can waive subdivision and site plan regulations. They cannot waive anything in the ordinance unless specified. Under (F)(5) in Impact Fees is the language pertaining to the applicant providing the Board written documentation relative to his development. Val Shelton stated it should be provided 21 days before the hearing.

Eric DeWitt stated there is ambiguity on the nonresidential impact fees. He read the section and stated he did not see any breakdown of types of businesses in terms of gallons per day. He would like a clarification and a breakdown of types of businesses and gallons per day. Eric Botterman stated every business is different. Diane Hardy stated the onus is on the applicant to get the information, have an engineer establish it and present it to the Board. The burden of proof is on the applicant. The applicant’s engineer should know how to calculate the flow data and it usually is approved by the Town’s engineer. The fees are based on projected wastewater and water flows.

**Action**

**Motion: Val Shelton made a motion to continue the request for a waiver of impact fee for residential use in a mixed use building at 81 Exeter Road, Tax Map U3, Lot 137, B1 Zone by Mr. Eric DeWitt until the next meeting on November 12, 2019.**

**Second: Jamie Bruton**

**Vote: All in favor**

Diane Hardy reminded Mr. DeWitt the time is running short on his extension. The conditional approval runs out in mid- December.

**Agenda Item #5 - New/Old Business**

Impact Fees – Discussion

Eric Botterman stated Diane Hardy provided them with a lot of information. He stated there needs to be a discussion of whether to have them or not. He felt they were just a tax the Town should not be imposing. As far as schools, there will probably be no further additions in our lifetime and enrollment is not increasing. He did not see a reason for a school impact fee going forward. Water and sewer should have system development fees managed by the Newmarket Department of Water and Sewer. He did not think they needed recreation impact fees. He would support doing away with impact fees.

Val Shelton concurred. There are a lot of recreation programs in town and they have a fee-based system. There are other recreational opportunities.

Diane Hardy stated the Recreation Department does have a capital reserve funds for recreation projects and takes advantage of various federal and state grant programs.

Gretchen Kast clarified that an impact fee it is not a tax, it is an offset.

Eric Botterman stated there have been waivers granted in the past that should not have.

Sarah Finch agreed. There are not a lot of school-aged children in town.

The Board decided to go to the Town Council to let them know they no longer feel there is a need for impact fees.

***Committee Reports***

***Town Council***

Gretchen Kast stated, regarding Town Council, there will be some Charter amendments this year. There will be changes to when elected and appointed people take office.

***Conservation Commission***

Sarah Finch stated they had a photo contest and the photos will be showcased in November at The Stone Church on November 3rd.

***Planner’s Report***

Diane Hardy stated the CIP Committee finished their recommendations for CIP projects. There will be a budget workshop on October 26.

Michal Zahorik stated he would like to be on the subcommittee for the Water Resources Master Plan Update chapter.

**Agenda Item #6 – Adjourn**

**Action**

**Motion: Val Shelton made a motion to adjourn**

**Second: Jamie Bruton**

**Vote: All in favor**

*All meetings are scheduled to end by 10:00 p.m. If an agenda item is not completed by that time, it may be continued to the following month’s regular meeting date. The Board reserves the right to reschedule agenda items within their noticed time frames. The Board also reserves the right to extend the meeting time beyond 10:00 p.m., if they deem it appropriate.*